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MICHAEL BARRY LIPSCHUTZ

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID J. KAMINSKI, an Individual,

Plaintiff,

vs.

MICHAEL BARRY LIPSCHUTZ, an
Individual,

Defendant.

Case No.: 2:24-cv-03905 HDV (JCx)

[Hon. Hernán D. Vera]

**STIPULATED PROTECTIVE
ORDER**

[CHANGES MADE BY COURT TO
PARAGRAPHS 3, 8, 9c]

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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, coding, and other valuable
17 research, development, commercial, financial, technical and/or proprietary
18 information for which special protection from public disclosure and from use for
19 any purpose other than prosecution of this action is warranted. Such confidential
20 and proprietary materials and information consist of, among other things,
21 confidential business or financial information, information regarding confidential
22 business practices, or other confidential research, development, or commercial
23 information (including information implicating privacy rights of third parties),
24 information otherwise generally unavailable to the public, or which may be
25 privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
28 discovery materials, to adequately protect information the parties are entitled to

1 keep confidential, to ensure that the parties are permitted reasonable necessary
2 uses of such material in preparation for and in the conduct of trial, to address their
3 handling at the end of the litigation, and serve the ends of justice, a protective
4 order for such information is justified in this matter. It is the intent of the parties
5 that information will not be designated as confidential for tactical reasons and that
6 nothing be so designated without a good faith belief that it has been maintained in
7 a confidential, non-public manner, and there is good cause why it should not be
8 part of the public record of this case.

9 **2. DEFINITIONS**

10 2.1 Action: *David J. Kaminski v. Michael Barry Lipschutz*, Case No.
11 2:24-cv-03905-HDV-JC.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless
15 of how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information
21 or items that it produces in disclosures or in response to discovery as
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information,
24 regardless of the medium or manner in which it is generated, stored, or maintained
25 (including, among other things, testimony, transcripts, and tangible things), that
26 are produced or generated in disclosures or responses to discovery in this matter.
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1 2.7 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this
5 Action. House Counsel does not include Outside Counsel of Record or any other
6 outside counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action
11 and have appeared in this Action on behalf of that party or are affiliated with a law
12 firm which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and
15 their support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material
4 other than during a court hearing or at trial.

5 Any use of Protected Material during a court hearing or at trial shall be
6 governed by the orders of the presiding judge. This Order does not govern the use
7 of Protected Material during a court hearing or at trial.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of
16 time pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for
19 Protection. Each Party or Non-Party that designates information or items for
20 protection under this Order must take care to limit any such designation to specific
21 material that qualifies under the appropriate standards. The Designating Party
22 must designate for protection only those parts of material, documents, items, or
23 oral or written communications that qualify so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are
25 not swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made for
28 an improper purpose (e.g., to unnecessarily encumber the case development

1 process or to impose unnecessary expenses and burdens on other parties) may
2 expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that
4 it designated for protection do not qualify for protection, that Designating Party
5 must promptly notify all other Parties that it is withdrawing the inapplicable
6 designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided
8 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for
10 protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party
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1 must affix the “CONFIDENTIAL legend” to each page that contains Protected
2 Material. If only a portion or portions of the material on a page qualifies for
3 protection, the Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party identify
6 the Disclosure or Discovery Material on the record, before the close of the
7 deposition all protected testimony.

8 (c) for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place on
10 the exterior of the container or containers in which the information is stored the
11 legend “CONFIDENTIAL.” If only a portion or portions of the information
12 warrants protection, the Producing Party, to the extent practicable, shall identify
13 the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party’s right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37-1, et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be
27 on the Designating Party. Frivolous challenges, and those made for an improper
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other

1 parties) may expose the Challenging Party to sanctions. Unless the Designating
2 Party has waived or withdrawn the confidentiality designation, all parties shall
3 continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation until the Court rules on the
5 challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that
8 is disclosed or produced by another Party or by a Non-Party in connection with
9 this Action only for prosecuting, defending, or attempting to settle this Action.
10 Such Protected Material may be disclosed only to the categories of persons and
11 under the conditions described in this Order. When the Action has been
12 terminated, a Receiving Party must comply with the provisions of section 13
13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a
15 location and in a secure manner that ensures that access is limited to the persons
16 authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated
20 "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this Action, as
22 well as employees of said Outside Counsel of Record to whom it is reasonably
23 necessary to disclose the information for this Action;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this Action and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (h) during their depositions, witnesses, and attorneys for witnesses, in the
- 9 Action to whom disclosure is reasonably necessary provided: (1) the deposing
- 10 party requests that the witness sign the form attached as Exhibit A hereto; and
- 11 (2) they will not be permitted to keep any confidential information unless they
- 12 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
- 13 otherwise agreed by the Designating Party or ordered by the court. Pages of
- 14 transcribed deposition testimony or exhibits to depositions that reveal Protected
- 15 Material may be separately bound by the court reporter and may not be disclosed
- 16 to anyone except as permitted under this Stipulated Protective Order; and
- 17 (i) any mediator or settlement officer, and their supporting personnel,
- 18 mutually agreed upon by any of the parties engaged in settlement discussions.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED

20 PRODUCED IN OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other

22 litigation that compels disclosure of any information or items designated in this

23 Action as “CONFIDENTIAL,” that Party must:

- 24 (a) promptly notify in writing the Designating Party. Such notification
- 25 shall include a copy of the subpoena or court order;
- 26 (b) promptly notify in writing the party who caused the subpoena or order
- 27 to issue in the other litigation that some or all of the material covered by the
- 28

1 subpoena or order is subject to this Protective Order. Such notification shall
2 include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served
6 with the subpoena or court order shall not produce any information designated in
7 this action as “CONFIDENTIAL” before a determination by the court from which
8 the subpoena or order issued, unless the Party has obtained the Designating
9 Party’s permission or unless otherwise required by the law or court order. The
10 Designating Party shall bear the burden and expense of seeking protection in that
11 court of its confidential material and nothing in these provisions should be
12 construed as authorizing or encouraging a Receiving Party in this Action to
13 disobey a lawful directive from another court.

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
18 information produced by Non-Parties in connection with this litigation is protected
19 by the remedies and relief provided by this Order. Nothing in these provisions
20 should be construed as prohibiting a Non-Party from seeking additional
21 protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-
27 Party that some or all of the information requested is subject to a
28 confidentiality agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (3) make the information requested available for inspection by
5 the Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within
7 14 days of receiving the notice and accompanying information, the Receiving
8 Party may produce the Non-Party's confidential information responsive to the
9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject
11 to the confidentiality agreement with the Non-Party before a determination by the
12 court unless otherwise required by the law or court order. Absent a court order to
13 the contrary, the Non-Party shall bear the burden and expense of seeking
14 protection in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has
17 disclosed Protected Material to any person or in any circumstance not authorized
18 under this Stipulated Protective Order, the Receiving Party must immediately
19 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
20 its best efforts to retrieve all unauthorized copies of the Protected Material,
21 (c) inform the person or persons to whom unauthorized disclosures were made of
22 all the terms of this Order, and (d) request such person or persons to execute the
23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
24 Exhibit A.

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
26 OTHERWISE PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other

1 protection, the obligations of the Receiving Parties are those set forth in Federal
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
3 whatever procedure may be established in an e-discovery order that provides for
4 production without prior privilege review. Pursuant to Federal Rule of Evidence
5 502(d) and (e), insofar as the parties reach an agreement on the effect of
6 disclosure of a communication or information covered by the attorney-client
7 privilege or work product protection, the parties may incorporate their agreement
8 in the stipulated protective order submitted to the court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of
11 any person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in
15 this Stipulated Protective Order. Similarly, no Party waives any right to object on
16 any ground to use in evidence of any of the material covered by this Protective
17 Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of
21 the specific Protected Material at issue. If a Party's request to file Protected
22 Material under seal is denied by the court, then the Receiving Party may file the
23 information in the public record unless otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within
26 60 days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of
2 the Protected Material. Whether the Protected Material is returned or destroyed,
3 the Receiving Party must submit a written certification to the Producing Party
4 (and, if not the same person or entity, to the Designating Party) by the 60 day
5 deadline that (1) identifies (by category, where appropriate) all the Protected
6 Material that was returned or destroyed and (2) affirms that the Receiving Party
7 has not retained any copies, abstracts, compilations, summaries or any other
8 format reproducing or capturing any of the Protected Material. Notwithstanding
9 this provision, Counsel are entitled to retain an archival copy of all pleadings,
10 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
11 correspondence, deposition and trial exhibits, expert reports, attorney work
12 product, and consultant and expert work product, even if such materials contain
13 Protected Material. Any such archival copies that contain or constitute
14 Protected Material remain subject to this Protective Order as set forth in Section 4
15 (DURATION).

16 14. Any violation of this Order may be punished by any and all
17 appropriate measures including, without limitation, contempt proceedings and/or
18 monetary sanctions.

19
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21
22 DATED: January 20, 2025

TESSER | GROSSMAN LLP
BRIAN M. GROSSMAN
ROBERT PAREDES

23
24
25 /s/

26 ROBERT PAREDES
27 Attorneys for Defendant
28 MICHAEL BARRY LIPSCHUTZ

1 DATED: January 20, 2025

PARKER, MILLIKEN, CLARK,
O'HARA & SAMUELIAN
THOMAS E. SHUCK

4 /s/

5 THOMAS E. SHUCK
6 Attorneys for Plaintiff
7 DAVID J. KAMINSKI

8 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED AS MODIFIED.

9
10 DATED: January 23, 2025

11 /s/
12

13 Honorable Jacqueline Chooljian
14 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on January 23, 2025 in the case of *David J.*
Kaminski v. Michael Barry Lipschutz, Case No. 2:24-cv-03905-HDV-JC. I agree
to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____